

BORA LASKIN LAW LIBRARY



3 1761 10084833 2

MATERIALS ON INDUSTRIAL PROPERTY

Copyright (C) 1984 by W.L. Hayhurst

TORONTO

Faculty of Law

University of Toronto

437
116
1978

LAW LIBRARY

AUG 23 1984

FACULTY OF LAW
UNIVERSITY OF TORONTO

FACULTY OF LAW LIBRARY
UNIVERSITY OF TORONTO

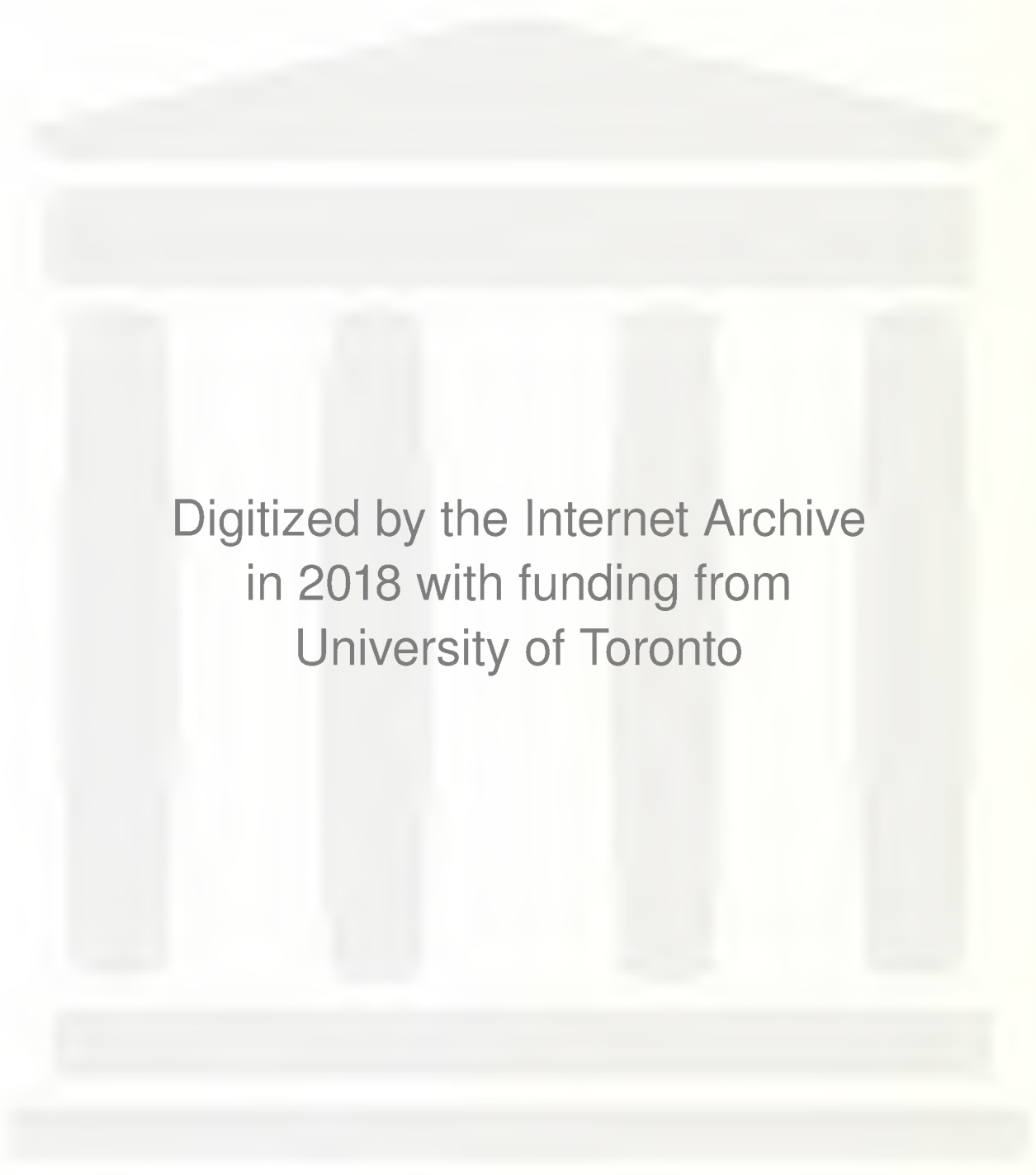
MATERIALS ON INDUSTRIAL PROPERTY

Copyright © 1984 by W.L. Hayhurst

TORONTO

Faculty of Law

University of Toronto



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

FACULTY OF LAW - UNIVERSITY OF TORONTO

INDUSTRIAL PROPERTY

1984 Syllabus

1. TRADE MARKS AND UNFAIR TRADING:

References: Fox, "Canadian Law of Trade Marks", 3rd ed., (1972)
Kerly, "Trade Marks and Trade Names", 11th ed. (1983)
McCarthy, "Trademarks and Unfair Competition", 2nd ed. (1984)

Note: The underlined numbers at the left of some of the case citations below are page numbers in the following materials, where extracts from the case will be found.

(1) 1 Trade Marks Act, R.S.C. 1970, c. T-10

(2) Goodwill:

- 42 Haig v. Forth Blending, (1953), 70 R.P.C. 259, 261 ("Dimple" bottle)
- 44 Star Industrial v. Yap Kwee Kor, [1976] F.S.R. 256, 269-270 (Ace Brand)
- 49 Bollinger v. Costa Brava, [1960] R.P.C. 16; [1961] R.P.C. 116 (Champagne)
- 54 Vine Products v. MacKenzie, [1969] R.P.C. 1, 23-24, 27, 29 (Sherry)
- 60 Bulmer v. Bollinger, [1978] R.P.C. 79, 93-100, 117 (Champagne Cider)
- 74 Erven Warnink v. Townend, [1980] R.P.C. 31 (Advocaat)

(3) Section 7 of the Trade Marks Act:

MacDonald v. Vapor, [1977] 2 S.C.R. 134
Asbjorn Hogard v. Northwest Tackle, (1981), 56 C.P.R. (2d) 115

(4) The elements of passing off:

(a) Length of time plaintiff has traded:

- 97 Licensed Victuallers v. Bingham, (1888), 38 Ch. D. 139, 142-143
- Stannard v. Reay, [1967] R.P.C. 389 (Mr. Chippy)
- Stringfellow v. McCain, [1984] F.S.R. 175, 194, 196
- Maxwell v. Hogg, (1867) L.R. 2 Ch. App. 307 (Belgravia)
- B.B.C. v. Talbot, [1981] F.S.R. 228 (Carfax)
- Elida Gibbs v. Colgate-Palmolive, [1983] F.S.R. 95 (tree theme)

(b) Territorial extent of plaintiff's reputation:

- 99 Brestian v. Try, [1958] R.P.C. 161, 170, 173 (Charles of London)
- Stork Restaurant v. Sahati, (1948), 166 F. 2d 348
- 102 Ewing v. Buttercup Margarine, (1917), 34 R.P.C. 232, 237, 239

- 105 Bernardin v. Pavilion, [1967] R.P.C. 581, 584, 588 (Crazy Horse Saloon)
Maxim's v. Dye, [1977] F.S.R. 364
Athlete's Foot v. Cobra, [1980] R.P.C. 343
Taco Co. v. Taco Bell, (1982), 42 A.L.R. 177
Anheuser-Busch v. Budejovicky Budvar, [1984] F.S.R. , (Budweiser)
Vallé's Steak House v. Tessier, (1980), 49 C.P.R. (2d) 218
Orkin v. Pestco, (1984), C.P.R. (2d)
- 108 Johnston v. Orr Ewing, (1882), 7 A.C. 219, 229-230 (two elephants ticket)
Barratt v. Auto Electric, (1955), 21 C.P.R. 30
Brewster Transport v. Rocky Mountain Tours, [1931] S.C.R. 336 (Royal Blue Line)

(c) Risk of damage:

- 110 Day v. Brownrigg, (1878), 10 Ch. D. 294, 304-305 (Ashford Lodge)
Kean v. McGivan, [1982] F.S.R. 119 (Social Democratic Party)
- 112 McCulloch v. May, (1948), 65 R.P.C. 58, 64-67 (Uncle Mac)
Newsweek v. B.B.C., [1979] R.P.C. 441, 447
Philip Morris v. Reynolds, (1976), 188 U.S.P.Q. 289 (Lights)
My Kinda Town v. Soll, [1984] R.P.C. 407
- 117 Walter v. Emmott, (1885), 54 L.J. Ch. 1059, 1061-1065 (The Mail)
Champagne Moët et Chandon v. Sainsbury, (1982) 6 E.I.P.R. D-127
Big O v. Goodyear, (1977) 195 U.S.P.Q. 417 (Big Foot)
Plomien v. National School of Salesmanship, (1943), 60 R.P.C. 209
Fisher v. Star, (1921), 132 N.E. 133 (Mutt & Jeff)
Shaw v. Golden Harvest, [1972] R.P.C. 559 (the One-armed Swordsman)

(d) Similarity of marks:

- 122 Seixo v. Provezende, (1866), L.R. 1 Ch. App. 192, 194-7
124 Tartan v. Carling, [1970] S.C.R. 323 (Pilcan)
125 Saville v. June Perfect, (1941), 58 R.P.C. 147, 160-163

(e) Similarity of activities:

- Francis Day & Hunter v. Twentieth Century-Fox, [1940] A.C. 112 (The Man Who Broke the Bank at Monte Carlo)
- 130 Yale v. Robertson, (1928), 46 F. 2d 972, 973-974
"The Rational Basis of Trademark Protection", (1927), 49 Harv. L.R. 813
- 132 Harrods Ltd. v. R. Harrod Ltd., (1923), 41 R.P.C. 74, 81, 87
Notre Dame v. Twentieth Century-Fox, (1965), 259 N.Y.S. 2d 832
Dallas Cowboys Cheerleaders v. Pussycat, (1979), 203 U.S.P.Q. 161
- 136 Annabel's v. Schock, [1972] R.P.C. 838, 844
Lego v. Lego, [1983] F.S.R. 155
- 138 Wombles v. Wombles, [1977] R.P.C. 99
- 139 Tavener Rutledge v. Trexapalm, [1977] R.P.C. 275 (Kojakpops)
Children's TV Workshop v. Woolworths, [1981] R.P.C. 187 (Muppets)
Lorimar v. Sterling, [1982] R.P.C. 395 (Dallas)
Sim v. Heinz, [1959] R.P.C. 75
Booth v. Colgate-Palmolive, (1973), 179 U.S.P.Q. 819

Krouse v. Chrysler, (1974), 1 O.R. (2d) 225
Racine v. C.J.R.C., (1978), 17 O.R. (2d) 370
Athans v. Canadian Adventure Camps, (1978), 17 O.R. (2d) 425
Heath v. Weist-Barron, (1982), 62 C.P.R. (2d) 92
Carson v. Reynolds, (1980), 49 C.P.R. (2d) 57
Exxon v. Exxon, [1982] R.P.C. 69

(f) Nature and extent of recognition and of relief:

Cellular v. Maxton, (1899), 16 R.P.C. 397, 408
Reddaway v. Banham, [1896] A.C. 199 (Camel Hair Belting)
141 Treasure Cot v. Hamley, (1950), 67 R.P.C. 89, 91, 93

(g) Descriptive terms:

144 Fawcett v. Valentine, [1950] Ex. C.R. 246, 254 (True Confessions)
Fawcett v. Popular Mechanics, (1937), 92 F. 2d 181
146 Office Cleaning Services, Ld. v. Westminster Window, (1946),
63 R.P.C. 39, 41-43
149 Burberrys v. Cording, (1909), 26 R.P.C. 693, 701, 704 (Slip-on)
152 Havana Cigar v. Oddenino, (1924), 41 R.P.C. 47, 55-56, 61
(Corona)

(h) Geographical terms:

157 Huntley v. Reading, (1893), 10 R.P.C. 277, 280-281

(i) Surnames:

159 Chivers v. Chivers, (1900), 17 R.P.C. 420, 429-430

(j) Name of the goods:

Linoleum v. Nairn, (1878), 7 Ch. D. 834

(k) Get-up:

161 Lever v. Goodwin, (1887), 4 R.P.C. 492, 506
Haig v. Forth, (1953), 70 R.P.C. 259, 261
162 Edge v. Niccolls, (1911), 28 R.P.C. 582, 588, 594
164 Parke, Davis v. Empire, [1964] S.C.R. 351, 354, 357-358
Sears v. Stiffel, (1964), 376 U.S. 225
167 Compco v. Day-Brite, (1964), 376 U.S. 234, 237-9
Boston Hockey Assn. v. Dallas Cap, (1975), 510 F. 2d 1004
Job's Daughters v. Lindeburg, (1980), 63 F. 2d 912

(l) Genuine goods:

Seiko Time v. Consumers Distributing, (1981), 29 O.R. (2d)
221, affd. (1982), 34 O.R. (2d) 481, mod. (1984), C.P.R.
(2d)
Revlon v. Cripps, [1980] F.S.R. 85
Wilkinson v. Cripps, [1982] F.S.R. 16
Illustrated Newspapers v. Publicity Services, (1938), 55 R.P.C. 172
Wilts United Dairies v. Robinson, [1957] R.P.C. 220, 237, affd.
[1958] R.P.C. 94

(5) False or misleading representations:

- Canada Safeway v. Manitoba Food & Chemical Workers, (1983), 73 C.P.R. (2d) 234
Benjamin v. Distributions Eclair, [1975] F.C. 250, 256
Loutone v. Canadian Everguard, (1972), 5 C.P.R. (2d) 240, 247
Cambridge University Press v. University Tutorial Press, (1928), 45 R.P.C. 335, 345
Copydex v. Noso, (1952), 69 R.P.C. 38
Hubbuck v. Wilkinson, [1899] 1 Q.B. 86
DeBeers v. International G.E.C., [1975] F.S.R. 323
Polydor v. Harlequin, [1980] F.S.R. 26
170 S. & S. v. Rowell, [1966] S.C.R. 419, 424-245
172 Combines Investigation Act, R.S.C. 1970, c. C-23 as amended
R. v. Consumers Distributing, (1981), 54 C.P.R. (2d) 50
R. v. Cunningham, (1974), 13 C.P.R. (2d) 244
R. v. Irving Oil, (1980), 47 C.P.R. (2d) 179
Jabour v. Law Society of B.C. (1983) 66 C.P.R. (2d) 1
R. v. Bristol-Myers, (1980), 45 C.P.R. (2d) 228
Rocois v. Quebec Ready Mix, [1980] 1 F.C. 184
Henuset v. Syncrude, [1980] 6 W.W.R. 218
182 Criminal Code, R.S.C. 1970, c. C-34
R. v. Strong, Cobb, Arner, (1974), 13 C.P.R. (2d) 216

(6) Registration of trade marks:

- Galanos v. Registrar, (1983), 69 C.P.R. (2d) 144
Gerhard Horn v. Registrar, (1983), 73 C.P.R. (2d) 23
GWG v. Registrar, (1981), 55 C.P.R. (2d) 1
Registrar v. Provenzano (1978), 37 C.P.R. (2d) 189, Affd. (1979) 40 C.P.R. (2d) 288
Johnson v. Marketing International, [1980] 1 S.C.R. 99
Conde Nast v. Gozlan, (1980), 49 C.P.R. (2d) 250
Nicholson's Application, (1931), 48 R.P.C. 227, 260, mod. (1932), 49 R.P.C. 88
Bombardier v. British Petroleum, (1972), 4 C.P.R. (2d) 204, affd. [1973] F.C. 480
MacEachern v. National Rubber, [1964] Ex. C.R. 135, 142
Siscoe v. Munn, [1959] Ex. C.R. 455, 468-469
Manhattan v. Princeton, (1972), 4 C.P.R. (2d) 6
Mayborn v. Registrar, (1983), 70 C.P.R. (2d) 1
Tubeco v. Association Quebecoise, (1980), 49 C.P.R. (2d) 228
Porter v. Don the Beachcomber, [1966] Ex. C.R. 982
Wenward v. Dynaturf, (1977), 28 C.P.R. (2d) 20
Motel 6 v. No. 6 Motel, (1981), 56 C.P.R. (2d) 44, 55-56
Wian v. Mady, [1965] 2 Ex. C.R. 3
Marineland v. Marine Wonderland, [1974] 2 F.C. 558
Re Andres & Gallo, (1976), 25 C.P.R. (2d) 126

(7) Rights acquired by trade mark registration:

(a) Section 20: bona fide use:

- 188 Bonus v. Essex. [1965] 1 Ex. C.R. 735, 753-754
Joseph Rodgers & Sons Ltd. v. W.N. Rodgers & Co., (1924), 41 R.P.C. 277

The Hurlbut Company v. The Hurlburt Shoe Company, [1925]
S.C.R. 141

Talbot v. Webley, (1886), 3 R.P.C. 276

190 Stone v. Steelace, (1929), 46 R.P.C. 406, 416-419

(b) Section 22: depreciating the value of goodwill:

194 Clairol v. Thomas, [1968] 2 Ex. C.R. 552, 556, 568-570, 575

Smith Kline & French v. Apotex, (1984), C.P.R. (2d)

Source Perrier v. Fira-Less, (1983), 70 C.P.R. (2d) 61

(c) Section 19: exclusive right to use:

Building Products v. B.P. Canada, (1961), 36 C.P.R. 121, 131

Dunlop v. Booth, (1926), 43 R.P.C. 139, 145-146

Champagne Heidsieck v. Buxton, (1930), 47 R.P.C. 28

Castrol v. Automotive Oil Supplies, [1983] R.P.C. 315

(8) Distinctiveness:

(a) Statutory definition, s. 2:

Registrar v. Hardie, [1949] S.C.R. 483, 489, 492

Liverpool Cable's Application, (1929), 46 R.P.C. 99, 124

199 Lea's Application (1913), 30 R.P.C. 216, 221-222

Crosfield's Application, (1910), 26 R.P.C. 837, 857

201 Aladdin v. Canadian Thermos, [1969] 2 Ex. C.R. 80, 113-114,
119-120

Anti-Monopoly v. General Mills, (1983) 216 U.S.P.Q. 588

Great Lakes v. The Noshery, [1968] 2 Ex. C.R. 622, 636

Home Juice v. Orange Maison, [1970] S.C.R. 942

Somerlite v. Brown, (1934), 51 R.P.C. 205, 239

Sarco v. Sarco, [1968] 2 Ex. C.R. 537, 542

"Bostitch" Trade Mark, [1963] R.P.C. 183, 197

"Weston" Trade Mark, [1968] R.P.C. 167, 184

207 "GE" Trade Mark, [1969] R.P.C. 418, 448, 454, revd. [1970]
R.P.C. 339, 372, 395, revd. [1973] R.P.C. 297, 336

Moore Dry Kiln v. U.S. Natural Resources (1977), 30 C.P.R.
(2d) 40

Registrar v. Aciers, (1979), 40 C.P.R. (2d) 28

(b) Effect of assignment:

Pinto v. Badman (1891), 8 R.P.C. 181, 191-195

Globelegance v. Sarkissian, [1974] R.P.C. 603, 605

Rey v. Lecouturier, (1910), 27 R.P.C. 268

211 Lacteosote v. Alberman, (1927), 44 R.P.C. 211, 223-225

A & P v. Registrar [1945] Ex. C.R. 233, 242

Dubiner v. Cheerio [1965] 1 Ex. C.R. 524, 543

Magder v. Breck's, [1976] 1 S.C.R. 527

Leather Cloth v. American Leather Cloth, (1863), 4 De G.J. & S.
137, affd. (1865), 11 H.L.C. 523, 534-535

(c) Effect of Licensing:

- Hensher v. Restawile, [1975] R.P.C. 31, 37
214 Coles v. Need, (1933), 50 R.P.C. 379, 386-388
Coca-Cola v. Pepsi-Cola, [1938] Ex. C.R. 263, 291-292
Robinson v. Finlay, (1878), 9 Ch. D. 487
Habib Bank v. Habib Bank, [1982] R.P.C. 1
Good Humor v. Good Humor, [1937] Ex. C.R. 61, 73-74
Gray Rocks v. Snowy Eagle, (1972), 3 C.P.R. (2d) 9
Chalet v. Foodcorp (1983) 66 C.P.R. (2d) 56
Mayborn v. Registrar, (1983), 70 C.P.R. (2d) 1
217 Bowden Wire v. Bowden Brake, (1914), 31 R.P.C. 385, 392
Sund v. Beachcombers, (1961), 27 D.L.R. 2d 434
Gattuso v. Gattuso, [1968] 2 Ex. C.R. 609
Dubiner v. Cheerio, [1965] 1 Ex. C.R. 524, 538-544, 556-560,
affd. [1966] S.C.R. 206, 221-222
Weight Watchers v. Weight Watchers, (1973), 8 C.P.R. (2d) 118
Cheerio v. Cheerio, [1965] 1 Ex. C.R. 562
H.T.X. International v. Semco, [1984] 1 I.P.R.
Holly Hobbie Trade Mark, [1984] F.S.R. 199

2. COPYRIGHT:

References: Fox, "The Canadian Law of Copyright and Industrial Designs",
2nd ed. (1967)
Copinger & Skone James, "Copyright", 12th ed, (1980)
Laddie, Prescott & Vitoria, "The Modern Law of Copyright" (1980)
Lahore, "Intellectual Property in Australia: Copyright" (1977)
Nimmer, "Copyright" (1979)

(1) Copyright Act, R.S.C. 1970, c. C-30

(2) Corporeal works and incorporeal copyrights:

267 Canadian Admiral v. Redifusion, [1954] Ex. C.R. 382
Re Dickens, [1935] 1 Ch. 267
Hay v. Sloan, (1958), 12 D.L.R. (2d) 397
Meikle v. Maufe, [1941] 3 All E.R. 144
Netupsky v. Dominion Bridge, [1972] S.C.R. 368

(3) The Berne and Universal Copyright Conventions:

Ludlow v. Canint, [1967] 2 Ex. C.R. 109

(4) Authorship and ownership:

268 Donoghue v. Allied, [1938] 1 Ch. 106, 109-110
Wood v. Boosey, (1867) L.R. 2 Q.B. 346
Hartnett v. Pinkett, (1953), 103 L.J. 204

(5) Subject matter:

Redwood v. Chappell, [1982] R.P.C. 109
British Leyland v. Armstrong, [1982] F.S.R. 481
270 Francis, Day & Hunter v. Twentieth Century Fox, [1939] 4 D.L.R.
353, 358-361
Exxon v. Exxon Insurance Consultants [1982] R.P.C. 69
274 Ladbroke v. Hill, [1964] 1 All E.R. 465, 469, 475-478
British Northrup v. Texteam, [1974] R.P.C. 57, 68
CAPAC v. CTV, [1968] S.C.R. 676
Cuisenaire v. South West Imports, [1969] S.C.R. 208
IBM v. Ordinateurs Spirales, (1984) C.P.R. (2d)
Apple v. Franklin, (1983), 219 U.S.P.Q. 113

(6) Originality:

280 Football League v. Littlewoods, [1959] 2 All E.R. 546, 552,
555-556
British Columbia Jockey Club v. Standen, (1983), 73 C.P.R.
(2d) 164
283 Deeks v. Wells, [1930] 4 D.L.R. 513, 522; affd. [1931] 4
D.L.R. 533, 547; affd. [1933] 1 D.L.R. 353, 356-357
286 Macmillan v. Cooper, (1923), 40 T.L.R. 186, 188
287 Walter v. Lane, [1900] A.C. 539, 548-9, 556
Lipman v. Massachusetts, (1973), 475 F. 2d 565

Robertson v. Lewis, [1976] R.P.C. 169, 175
Time v. Geis, (1968), 293 F. Supp. 130
Batlin v. Snyder, (1976), 189 U.S.P.Q. 753

(7) Infringement:

Performing Right Society v. Rangers, [1975] R.P.C. 626
Rank v. Dodds, [1984] 1 I.P.R.
Warner Bros. v. C.E.S.M., (1971), 65 C.P.R. 215
Vigneux v. Canadian Performing Right, [1943] S.C.R. 348, 361;
 revd. [1945] A.C. 108
R. v. Loughheed, (1982), 59 C.P.R. (2d) 107
Francis, Day & Hunter v. Bron, [1963] 2 All E.R. 16
L.B. (Plastics) v. Swish Products, [1979] R.P.C. 551
290 Hanfstaengl v. Baines, [1895] A.C. 20, 30-31
 Solar Thompson v. Barton, [1977] R.P.C. 537
 Hawkes v. Paramount, [1934] 1 Ch. 593
292 Cartwright v. Wharton, (1912), 25 O.L.R. 357, 362-363
 Elanco v. Mandops, [1980] R.P.C. 213
 Chilton v. Progress, [1895] 2 Ch. D. 29
 Harper & Row v. Nation Enterprises, (1983), 220 U.S.P.Q. 321
 Landsberg v. Scrabble, (1984), 221 U.S.P.Q. 1140
 Ravenscroft v. Herbert, [1980] R.P.C. 193
294 Harman v. Osborne, [1967] 2 All E.R. 324, 328
295 Nichols v. Universal Pictures, (1930), 45 F. 2d 119, 121
 Universal v. Kamar, (1983), 217 U.S.P.Q. 1162
 Holland v. Van Damm, [1936] MacG. Cop. Cas. 69
296 Kantel v. Grant, [1933] Ex. C.R. 84, 87, 94-96
300 Moreau v. St. Vincent, [1950] Ex. C.R. 198, 204-205, 207
303 Bauman v. Fussell, [1978] R.P.C. 485
 Williams & Wilkins v. U.S., (1974), 487 F. 2d 1345, affd. (1975),
 95 S. Ct. 1344
 Sony v. Universal City Studios, (1984), 220 U.S.P.Q. 665
 Hubbard v. Vosper [1972] All E.R. 1023, 1026-1028, 1031
 Schweppes v. Wellingtons, [1984] F.S.R. 210
 Moorhouse v. University of New South Wales, [1976] R.P.C. 151
 CBS v. Ames, [1981] R.P.C. 407
 RCA v. Fairfax, [1982] R.P.C. 91
 A & M Records v. Audio Magnetics, [1979] F.S.R. 1
 Winstone v. Wurlitzer, [1946] V.L.R. 338
 Beloff v. Pressdram, [1973] R.P.C. 765, 783-784
 The Queen v. Lorimer, (1984) 77 C.P.R. (2d) 262
 R. v. Kirkwood, (1983), 73 C.P.R. (2d) 114
 R. v. Stewart, (1983), 42 O.R. (2d) 225
 Gnass v. Cité d'Alma (June 30, 1977; P.Q.C.A.)
 Snow v. Eaton, (1983), 70 C.P.R. (2d) 105

3. INDUSTRIAL DESIGNS:

References: Fox, "Canadian Law of Copyright", 2nd ed. (1967),
pp. 650-691
Russell-Clarke, "Copyright in Industrial Designs" 5th ed.
(1974)

(1) Industrial Design Act, R.S.C. 1970, c. I-8

Industrial Designs Rules, C.R.C. 1978, c. 964

(2) Subject matter:

325 35 U.S. Code, s. 171

329 Cimon v. Bench Made, [1965] 1 Ex. C.R. 811, 828-833, 845-847

338 Clatworthy v. Dale, [1929] S.C.R. 429, 434-5

340 Hensher v. Restawile, [1975] R.P.C. 31, 64, 62

Stenor v. Whitesides, (1948), 65 R.P.C. 1, 9

343 Amp v. Utilux, [1972] R.P.C. 103, 197-110, 113

347 Re Clarke's Design, (1896) 13 R.P.C. 351, 358, 361

King Features v. Kleeman, [1941] A.C. 417, 427

Ware v. Anglo-Italian (No. 1), [1922] MacG. Cop. Cas. 346

Mazer v. Stein, (1954), 347 U.S. 201

(3) Novelty and originality:

349 Saunders v. Weil, (1893), 10 R.P.C. 29, 33

350 Dean's Rag Book v. Pomerantz, (1930), 47 R.P.C. 485, 491

351 Rosedale v. Airfix, [1957] R.P.C. 239, 244

352 Kilvington v. Goldberg, (1957), 16 Fox Pat. C. 164

Valor v. Main Gas, [1973] R.P.C. 871, 877

(4) Infringement:

R. v. Premier Cutlery, (1981), 55 C.P.R. (2d) 134

358 Re Bayer's Design, (1907), 24 R.P.C. 65, 76-77

Phillips v. Harbro, (1920), 37 R.P.C. 233, 239-240

360 Walker v. Scott, (1892), 9 R.P.C. 482, 485

Toy Lord Application, (1978), 36 C.P.R. (2d) 234

Kevi v. Suspa-Verein, [1982] R.P.C. 173, 178-179, 181.

(5) Registration:

Melnor v. Lido, [1971] S.C.R. 72

4. PATENTS

References: Fox, "Canadian Patent Law and Practice" 4th ed. (1969)
Terrell, "Patents", 13th ed. (1982)
Blanco White, "Encyclopedia of United Kingdom and
European Patent Law"

(1) Introduction:

- 361 Statute of Monopolies, 21 Jac. I c. 3 s. 6; R.S.O. 1980,
Appendix A, p. 3
- 364 Patent Act, R.S.C. 1970, c. P-4
- 419 British United Shoe v. Fussell, (1908), 25 R.P.C. 631, 649-652

(2) Subject matter:

- Lane-Fox v. Kensington, (1892), 9 R.P.C. 413, 416
- 423 G.E.C.'s Application, (1943), 60 R.P.C. 1, 4
- 424 IBM's Application, [1980] F.S.R. 564, 568-569, 572-573
- 428 35 U.S.C. 100-104
- 430 Re Walter, (1980), 205 U.S.P.Q. 397
- 444 Diamond v. Diehr, (1981), 209 U.S.P.Q. 1, 4-10
Diamond v. Bradley, (1979), 202 U.S.P.Q. 480, affd. (1981),
209 U.S.P.Q. 97
- 451 Schlumberger v. Commissioner, (1981), 56 C.P.R. (2d) 204
Towers' Application, 112 C.P.O.R., May 8, 1984
- 455 Re Bergy, (1979), 201 U.S.P.Q. 352, 360-369, 371-373
Diamond v. Chakrabarty, (1980), 206 U.S.P.Q. 193
- 464 Abitibi's Application, (1982), 62 C.P.R. (2d) 81
- 473 Canadian Patent Office Manual of Patent Office Practice,
"Utility and Non-Statutory Subject Matter", Chapter 12
Tennessee Eastman v. Commissioner, [1974] S.C.R. 111
Organon's Application, (1974), 15 C.P.R. (2d) 273
Wellcome's Application, [1981] F.S.R. 72
Organon's Application, [1970] R.P.C. 574
Eli Lilly's Application, [1975] R.P.C. 438
Sandoz v. Gilcross, [1974] S.C.R. 1336
Shell v. Commissioner, (1983), 67 C.P.R. (2d) 1

(3) The patent specification:

- 478 Natural Colour v. Bioschemes, (1915), 32 R.P.C. 256, 269-270
- 480 American Cyanamid v. Ethicon, [1979] R.P.C. 215, 245-246,
251-255, 261
Minerals Separation v. Noranda Mines, (1952), 69 R.P.C. 81,
92-93
- 488 B.V.D. v. Canadian Celanese, [1937] S.C.R. 221, 230, 233,
236-237
Leithiser v. Pengo, [1974] 2 F.C. 954
Farbwerke Hoechst v. Gilbert, [1966] S.C.R. 189

(4) Novelty:

- 493 35 U.S. Code, s. 104
- 494 Electric and Musical Industries v. Lissen, (1939), 56 R.P.C.
23, 39, 41-43

Minnesota Mining & Manufacturing v. Bondina [1973] R.P.C. 491,
521
Bristol-Myers' Application, [1975] R.P.C. 127
Canadian Patent Scaffolding v. Delzotto, (1978), 42 C.P.R. (2d)
7, 24-32
TP Laboratories v. Professional Positioners, (1984), 220 U.S.Q.P.
577

(5) Obviousness:

498 35 U.S. Code, s. 103
Graham v. John Deere, (1965), 383 U.S. 1
499 Xerox v. IBM, (1977), 33 C.P.R. (2d) 24, 32-37, 61-62, 82
508 Technograph v. Mills, [1969] R.P.C. 395, 404-5, 407-8; affd.
[1972] R.P.C. 346, 355
513 Rado v. Tye, [1969] F.S.R. 563, 565-6
515 General Tire v. Firestone, [1971] R.P.C. 173, 232, 245-6;
affd. [1972] R.P.C. 457, 482-483, 485-486, 499-500
I.C.I.'s Application, [1977] F.S.R. 434
Farbwerke Hoechst v. Halocarbon, (1979), 42 C.P.R. (2d) 145, 153-156
Baxter v. Cutter, (1981), 52 C.P.R. (2d) 163
Procter & Gamble v. Calgon, (1981), 56 C.P.R. (2d) 214, 240
Re Antle, (1971), 170 U.S.P.Q. 285
Dow's Patent, [1975] R.P.C. 165, 169
523 Wood v. Gowshall, (1937), 54 R.P.C. 37, 40

(6) Utility:

Societe Rhone-Poulenc v. Gilbert, (1967), 35 Fox Pat. C. 174;
affd. [1968] S.C.R. 950
Monsanto v. Commissioner, [1979] 2 S.C.R. 1108
Burton Parsons v. Hewlett-Packard, [1976] 1 S.C.R. 555
Norton & Gregory v. Jacobs, (1937), 54 R.P.C. 271
Metalliflex v. Rodi & Wienenberger, [1961] S.C.R. 117, 121-122

(7) Infringement:

524 Henriksen v. Tallon, [1965] R.P.C. 434, 443, 445
528 McPhar v. Sharpe, [1956-1960] Ex. C.R. 467
529 Catnic v. Hill, [1981] F.S.R. 60
538 Wilderman v. Berk, (1925), 42 R.P.C. 79, 88
Beecham v. Bristol, [1977] F.S.R. 215
Morton-Norwich v. Intercen, [1976] F.S.R. 513, 521-526
Kalman v. PCL Packaging, [1982] F.S.R. 406
539 35 U.S. Code, s. 271; UK Patents Act, 1977, s. 60
Copeland-Chatterson v. Hatton, (1906), 10 Ex. C.R. 224;
affd. (1906), 37 S.C.R. 251
540 Slater v. Payer, (1968), 38 Fox Pat. C. 139, 157, 163-4
543 Procter & Gamble v. Bristol-Myers, (1979), 39 C.P.R. (2d)
145, 165-170; affd. 42 C.P.R. (2d) 33, 35
Solar Thomson v. Barton, [1977] R.P.C. 537

(8) Remedies:

City of Milwaukee v. Activated Sludge, (1934), 69 F. 2d 577
Armstrong v. Domco, (1983), 66 C.P.R. (2d) 46

(9) Statutory curtailments:

Bristol-Myers v. Beecham, (1980), 48 C.P.R. (2d) 87
Formea v. Polymer, [1968] S.C.R. 754
Libby-Owens-Ford v. Ford, [1969], 1 Ex. C.R. 529; affd.
[1970] S.C.R. 833
Peterson v. Plastiseal, (1973), 8 C.P.R. (2d) 222; (1974), 14
C.P.R. (2d) 48, 52
Procter & Gamble v. Calgon, (1981), 56 C.P.R. (2d) 214, 243
Lido v. Teledyne, (1981), 57 C.P.R. (2d) 29

5. ABUSE OF EXCLUSIVE RIGHTS:

(1) Sales sub modo:

Badische v. Isler, (1906), 23 R.P.C. 173, 180
550 Incandescent v. Cantelo, (1895), 12 R.P.C. 262, 264-265
552 National Phonograph v. Menck, (1911), 28 R.P.C. 229, 245-6

(2) U.S. and U.K. developments:

Hazeltine v. Zenith, (1969), 395 U.S. 100
Pfizer v. F.T.C., (1968), 401 F. 2d 574
Motion Picture Patents v. Universal, (1917), 243 U.S. 502
554 Morton Salt v. Suppiger, (1942), 314 U.S. 488
British Leyland v. Armstrong, [1983] F.S.R. 50

(3) Enforceability of restraints:

Darcy v. Allein, (1602), 77 E.R. 1260, 1263
555 Copeland-Chatterson v. Hatton, (1906), 10 Ex. C.R. 224, 237;
affd. 37 S.C.R. 651
Mouchel v. Cubitt, (1907), 24 R.P.C. 194
556 Tool Metal v. Tungsten, (1955), 72 R.P.C. 209, 214, 218
Culzean v. Midwestern Broom, (1984) C.P.R. (2d)

(4) 559 The Combines Investigation Act, R.S.C. 1970, c. C-23 as amended:

Rocois v. Quebec Ready Mix, [1980] 1 F.C. 184
Seiko Time v. Consumers Distributing, (1980) 29 O.R. (2d) 221
Henuset v. Syncrude, [1980] 6 W.W.R. 218
Tank Lining v. Dunlop, (1983), 40 O.R. (2d) 219

(5) Defences to infringement actions:

Rodi v. Watchstraps, (1958), 18 Fox Pat. C. 75
566 RBM v. Philips, (1973), 9 C.P.R. (2d) 46; 10 C.P.R. (2d) 23
Amoco v. Texaco, [1976] 1 F.C. 258
Eli Lilly v. Marzone, (1977), 29 C.P.R. (2d) 253
Time-Life v. Interstate, [1978] F.S.R. 251, 286-287

6. TRADE SECRETS & CONFIDENTIAL INFORMATION

References: Turner, "The Law of Trade Secrets", (1962)
Fox, "The Canadian Law of Trade Marks and Unfair
Competition", 3rd ed. (1972), Chapter 13

(1) Establishment of a contractual or confidential relationship:

- 570 Triplex v. Scorah, (1938), 55 R.P.C. 21, 28
Canadian Aero Services v. O'Malley, [1974] S.C.R. 592;
Comment, 28 C.P.R. (2d) 68
United Sterling v. Felton, [1974] R.P.C. 162
Cranleigh v. Bryant, [1966] R.P.C. 81
Hivac v. Park Royal, [1946] Ch. 169
Pre-Cam v. McTavish, [1966] S.C.R. 551
- 571 Saltman v. Campbell, (1948), 65 R.P.C. 203, 211-6
Shellmar v. Allen-Qualley, (1929), 36 F. 2d 623
- 577 Coco v. Clark, [1969] R.P.C. 41, 46-50
Home Office v. Harman, [1982] 1 All E.R. 532
Canadian Javelin v. Sparling, (1982) 59 C.P.R. (2d) 146, 154,
156, 160, 165
Kewanee v. Bicron, (1974), 416 U.S. 470

(2) The nature of the information sought to be protected:

Thomas Marshall v. Guinle, [1979] F.S.R. 208
Interfirm Comparison v. Law Society, [1977] R.P.C. 137
Exchange Telegraph v. Central News, [1897] 2 Ch. 48
Ansell v. Allied Rubber, [1972] R.P.C. 811
Microtherm v. Percy, [1957] R.P.C. 207
Talbot v. General Television, [1981] R.P.C. 1
Church of Scientology v. Kaufman, [1973] R.P.C. 635, 649, 658

(3) Persons subject to liability:

- 583 Seager v. Copydex, [1967] R.P.C. 349, 367-8, 371
Weld-Blundell v. Stephens, [1920] A.C. 956
Lord Ashburton v. Pape, [1913] 2 Ch. 469
Morison v. Moat, (1851), 9 Hare 241
B.C. Lightweight v. Canada Cement, (1983), 72 C.P.R. (2d) 1, 16
British Industrial Plastics v. Ferguson, (1941) 58 R.P.C. 1
Colgate v. Carter, (1956) 230 F. 2d 855, 864
- 586 Printers v. Holloway, [1965] R.P.C. 239, 252-253
- 588 Restatement of Torts, s. 758
- 589 Conmar v. Universal, (1949), 172 F. 2d 150, 156
- 590 Stephenson v. McDonald, (1951), 68 R.P.C. 190, 195; revd. (1952),
69 R.P.C. 10, 16
Abernethy v. Hutchison, (1825), 1 H. & Tw. 28
Wheatley v. Bell, [1983] 7 E.I.P.R. 194
De Acosta v. Brown, (1944), 146 F. 2d 408
DuPont v. Christopher, (1970), 431 F. 2d 1012
Franklin v. Giddins, [1978] Qd. R. 72
Malone v. Commissioner of Police, [1979] 2 All E.R. 620, 638,
644-646
Saccone v. Orr, (1981), 34 O.R. (2d) 317
Copyright Agency v. Haines, [1982] F.S.R. 331, 344.

(4) Duration of obligations:

Aronson v. Quick Point, (1979), 201 U.S.P.Q. 1
Regina Glass Fibre v. Schuller, [1972] R.P.C. 229
Mustad v. Dosen, [1963] R.P.C. 41
Peter Pan v. Corsets Silhouette, [1963] R.P.C. 45
Schering v. Falkman, [1981] 2 W.L.R. 848
House of Spring Garden v. Point Blank, [1983] F.S.R. 213
Reliable Toy v. Collins, (1950), 13 C.P.R. 53
Bee Chemical v. Plastic Paint, (1980) 47 C.P.R. (2d) 133
Winston v. M.M.M., (1965), 350 F. 2d 134
Underwater Storage v. U.S. Rubber, (1966), 371 F. 2d 950
Dunford v. Johnson, [1978] F.S.R. 145
Woodward v. Hutchins, [1977] 2 All E.R. 751
Parry-Jones v. Law Society, [1969] 1 Ch. 1

7. UNFAIR TRADE PRACTICES

- 592 Malone v. Commissioner of Police (No. 2), [1979] 2 All E.R.
620, 638, 642-3
Mogul v. McGregor, (1889), 23 Q.B.D. 598, 613, 625-626, affd.
[1892] A.C. 25, 36
Combines Investigation Act, R.S.C. 1970, c. C-23, ss. 31.1, 32
B.C. Lightweight v. Canada Cement, (1983) 72 C.P.R. (2d) 1, 16
Schoolmaster's case, (1410), Y.B. 11 H. 4, f 47, pl 21 (not in
the library)
Tuttle v. Buck, (1909), 119 N.W. 946
Allen v. Flood [1898] A.C. 1
595 Acrow v. Rex Chainbelt, [1971] 1 W.L.R. 1676, 1682
597 Lonhro v. Shell, [1981] 2 All E.R. 456, 462-464
600 DuPont v. Christopher, (1970), 431 F. 2d 1012
602 Victoria Park v. Taylor, (1937), 58 C.L.R. 479, 494, 496-8, 508-9
608 International News Service v. Associated Press, (1918), 248 U.S.
215, 240, 250, 257, 259, 262-3
614 Cheney v. Doris Silk, (1929), 35 F. 2d 279
617 Capitol Records v. Erickson, (1969), 164 U.S.P.Q. 465, 471
Zacchini v. Scripps Howard, (1977), 97 S. Ct. 2849
R.C.A. v. Pollard, [1983] F.S.R. 9, 16, 22
Cadbury-Schweppes v. Pub Squash, [1981] R.P.C. 429
Eldon v. Reliable Toy, [1966] 1 O.R. 409